

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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BRENDA R.,

Plaintiff,

v.

5:20-cv-0735  
(ML)

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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APPEARANCES:

OF COUNSEL:

LAW OFFICES OF KENNETH HILLER, PLLC  
Counsel for the Plaintiff  
269 Reserve Road  
West Seneca, New York 14224

ANTHONY J. ROONEY, ESQ.

SOCIAL SECURITY ADMINISTRATION  
Counsel for the Defendant  
J.F.K. Federal Building, Room 625  
15 New Sudbury Street  
Boston, Massachusetts 02203

TIMOTHY SEAN BOLEN, ESQ.  
Special Assistant U.S. Attorney

MIROSLAV LOVRIC, United States Magistrate Judge

**ORDER**

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral

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<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.


argument was heard in connection with those motions on February 28, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

**ORDERED** as follows:

- 1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 19) is DENIED.
- 2) Defendant's motion for judgment on the pleadings (Dkt. No. 20) is GRANTED.
- 3) The Commissioner's decision denying Plaintiff Social Security benefits is AFFIRMED.
- 4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.
- 5) The Clerk of Court is respectfully directed to enter judgment, based upon this determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: March 3, 2022  
Binghamton, New York

  
Miroslav Lovric  
United States Magistrate Judge  
Northern District of New York

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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BRENDA R.

vs. 5:20-CV-0735

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Transcript of Order and Decision

February 28, 2022

The HONORABLE MIROSLAV LOVRIC Presiding.

A P P E A R A N C E S

For Claimant: ANTHONY ROONEY, ESQ.

For Defendant: TIMOTHY BOLEN, ESQ.

*Ruth I. Lynch, RPR, RMR, NYSRCR  
Official United States Court Reporter  
Binghamton, New York 13901*

1           THE COURT: Well, let me begin by indicating first  
2           that the plaintiff has commenced this proceeding pursuant to  
3           Title 42 United States Code Sections 405(g) and 1383(c) to  
4           challenge the adverse determination by the Commissioner of  
5           Social Security finding that she was not disabled at the  
6           relevant times and therefore ineligible for the benefit that  
7           she sought.

8           By way of background, the Court sets forth the  
9           following fact and factors.

10          First, plaintiff was born in 1973. She is  
11          currently approximately 48 years of age. She was 41 years  
12          old at the alleged onset of her disability on June 25th of  
13          2015.

14          Plaintiff lives with her two adult sons in  
15          Syracuse, New York. She has a driver's license but can no  
16          longer drive herself because of an issue with her leg.

17          Plaintiff stands approximately five feet one inch.

18          Plaintiff has an 11th grade education and is not a  
19          high school graduate.

20          Plaintiff's work history includes that plaintiff  
21          has not engaged in substantial gainful activity since  
22          June 25 of 2015, the alleged onset date, and her past work  
23          experience was as a housekeeping cleaner. Transferability  
24          is not an issue because the plaintiff's past relevant work  
25          is unskilled.

1           Plaintiff suffers from the following severe  
2   impairments: Degenerative disc disease of the lumbar spine;  
3   lumbar radiculopathy; right posterior tibial tendinitis,  
4   status post osteotomy of the right heel bone; and obesity.  
5   She states that she has been -- that she has disabling back  
6   injury with symptoms of chronic back pain and lower  
7   extremity inflammation.

8           Plaintiff is prescribed the following medications:  
9   Cyclobenzaprine, Diclofenac, tramadol, VINOCA, Xanax, and  
10   oxymorphone.

11           Plaintiff states that she is limited performing  
12   light activities and that her children help her with  
13   household tasks when needed.

14           Procedurally, the Court notes the following as far  
15   as the procedural history of this case:

16           Plaintiff applied for Title II and Title XVI  
17   benefits on June 29 of 2015, alleging an onset date of  
18   June 25th of 2015.

19           In support of her claim for disability benefits,  
20   plaintiff claims disability based on lumbar spine  
21   impairments that prevent her from sitting and standing for  
22   extended periods of time and prevent her from lifting.

23           Administrative Law Judge Jeremy G. Eldred  
24   conducted a hearing on November 2nd, 2017, to address  
25   plaintiff's application for benefits. ALJ Eldred issued an

1 unfavorable decision on March 16th of '18.

2 On December 19th of 2018, the Social Security  
3 Administration Appeals Council denied plaintiff's  
4 application for review. Plaintiff appealed to the U.S.  
5 District Court for the Northern District of New York, where  
6 the parties stipulated to a remand on August 21st of 2019.

7 On September 25th, 2019, the Appeals Council  
8 issued a remand order. A second hearing was held on  
9 February 3rd of 2020. ALJ Eldred issued a second  
10 unfavorable decision on March 6th of 2020.

11 This action was commenced on July 1st of 2021 and  
12 is timely.

13 In his decision, ALJ Eldred applied the familiar  
14 five-step test for determining disability. See  
15 administrative transcript record at pages 499 through 510.

16 At step one, he concluded that plaintiff had not  
17 engaged in substantial gainful activity since June 25 of  
18 2015, the alleged onset date of disability.

19 At step two, he concluded that plaintiff suffers  
20 from severe impairments that impose more than minimal  
21 limitations on her ability to perform basic work activities,  
22 specifically degenerative disc disease of the lumbar spine,  
23 quote/unquote back injury; lumbar radiculopathy; right  
24 posterior tibial tendinitis; status post osteotomy of the  
25 right heel bone; and obesity. The ALJ also considered the

1 mental impairment of anxiety disorder.

2 At step three ALJ Eldred concluded that  
3 plaintiff's conditions do not meet or medically equal any of  
4 the listed presumptively disabling conditions set forth in  
5 the Commissioner's regulations, and focusing on  
6 listing 1.02, which was a listing regarding major  
7 dysfunction of a joint; listing 1.03, which is  
8 reconstructive surgery or surgical arthrodesis of a major  
9 weight bearing joint; also listing 1.04, which is disorders  
10 of the spine; and listing 11.14, which is a listing  
11 regarding peripheral neuropathy.

12 At step four, the ALJ next determined that  
13 plaintiff obtains the residual functional capacity, also  
14 known as RFC, to perform the full range of sedentary work as  
15 defined in 20 CFR sections 404.1567(a) and 416.967(a).

16 The ALJ concluded that plaintiff could not perform  
17 her past relevant work as a cleaner. The ALJ therefore  
18 proceeded to step five.

19 At step five the ALJ concluded that based on RFC  
20 for the full range of sedentary work and considering  
21 plaintiff's age, education, and work experience, a finding  
22 of not disabled was directed by Medical-Vocation  
23 Rules 201.24 and 201.18.

24 Now, as the parties know, the Court's functional  
25 role in this case is limited and extremely deferential. I

1 must determine whether correct legal principles were applied  
2 and whether the determination is supported by substantial  
3 evidence, defined as such relevant evidence as a reasonable  
4 mind would find sufficient to support a conclusion. As the  
5 Second Circuit noted in *Brault V. Social Security*  
6 *Administration Commissioner*, that's found at 683 F.3d 443, a  
7 2012 case, the Second Circuit noted the standing is  
8 demanding, more so than the clearly erroneous standard.

9           The Court also noted in *Brault* that once there is  
10 a finding of fact, that fact can be rejected only if a  
11 reasonable fact-finder would have to conclude otherwise.

12           Now, generally speaking plaintiff raises two  
13 arguments on appeal. First, plaintiff argues that the ALJ  
14 erred in assigning significant weight to Dr. Ganesh.  
15 Plaintiff argues that Dr. Ganesh examined her more than four  
16 years before the hearing and her condition deteriorated  
17 thereafter. Plaintiff also argues that Dr. Ganesh did not  
18 have any images of plaintiff's spine when she evaluated  
19 plaintiff. In addition, plaintiff argues that the ALJ did  
20 not follow the Appeals Council's remand order to complete  
21 the administrative record in accordance with the regulatory  
22 standards regarding consultative examinations and medical  
23 evidence.

24           Second, plaintiff argues that the ALJ improperly  
25 evaluated her subjective complaints because, in addition to



1 difficulty lifting, walking, and standing, she had problems  
2 sitting for prolonged periods of time and needed to change  
3 position. Plaintiff argues that the ALJ discounted her  
4 subjective complaints because she testified to driving and  
5 doing housework, but plaintiff also reported that she  
6 required breaks and needed the assistance of others for many  
7 of these activities.

8           The Court provides the following analysis in  
9 connection with this case. An RFC represents plaintiff's  
10 maximum ability to perform sustained work activities in an  
11 ordinary setting on a regular and continuing basis, meaning  
12 eight hours a day for five days a week, or an equivalent  
13 schedule. An RFC determination is informed by consideration  
14 of all relevant medical and other evidence and, of course,  
15 to pass muster, must be supported by substantial evidence.

16           Because the application in this case was filed  
17 before March 27th of 2017, the regulations that were in  
18 effect at that time control the weight to be given to  
19 medical opinions.

20           Here, the ALJ explained his reasoning for  
21 assigning significant weight to the opinion of Dr. Ganesh  
22 that plaintiff had, quote/unquote, no gross limitations in  
23 sitting, standing, and walking, and mild limitations in  
24 lifting, carrying, pushing, and pulling, end of quote. See  
25 administrative transcript at page 508.

1           The ALJ noted that Dr. Ganesh examined plaintiff  
2 and her findings, quote, are generally consistent with the  
3 claimant's chronic pain, medical imaging, and presentation  
4 during physical examinations, end quote. The ALJ explained  
5 that he did not give greater weight to this opinion of  
6 Dr. Ganesh because the finding that the claimant has no  
7 limitations in standing and walking is inconsistent with the  
8 claimant's history of chronic pain, obesity, and lower  
9 extremity impairments.

10           The Court also notes that the ALJ's RFC was more  
11 restrictive than Dr. Ganesh's opinion. Quote: Remand is  
12 generally not warranted where the ALJ's RFC finding is more  
13 restrictive than the limitations set forth in the medical  
14 opinion of record. See *Lesanti versus Commissioner of*  
15 *Social Security*, 19-CV-0121, that can be found at 2020 West  
16 Law 500986 at page 6, and that's a Western District New York  
17 January 30th of 2020 case. And in that case, quote, there  
18 is nothing improper about an ALJ considering medical opinion  
19 evidence that assesses, say, few or no exertional  
20 limitations, and then relying in part on the combined force  
21 of other record evidence, such as a claimant's subjective  
22 testimony, to nevertheless choose to assign certain  
23 limitations that result in a more restrictive RFC finding,  
24 end of quote. See also *Tammy Lynn B. versus Commissioner of*  
25 *Social Security*, 382 F.Supp 3d 184 at page 195, and that's a

1 Northern District New York 2019 case.

2 Here in this case, the ALJ applied more physical  
3 limitations than Dr. Ganesh recommended. For example,  
4 Dr. Ganesh opined that plaintiff had mild limitations in  
5 lifting, carrying, pushing, and pulling, see administrative  
6 transcript at page 508, while the ALJ limited plaintiff to  
7 sedentary work which under 20 CFR sections 404.1567(a) and  
8 416.967(a), which limits her to lifting and carrying no more  
9 than 10 pounds and occasionally lifting or carrying articles  
10 like docket files, ledgers, and small tools.

11 In addition, although Dr. Ganesh did not consider  
12 images of plaintiff's spine in formulating the opinions  
13 regarding plaintiff's limitations, a consultative examiner  
14 is not required to obtain or review laboratory reports or  
15 treatment records. See Wright V. Berryhill, 687 Fed  
16 Appendix 45 at page 48, that's a Second Circuit 2017 case.  
17 Moreover, as defendant set forth in her brief, the images of  
18 plaintiff's lumbar spine exist in the record alongside  
19 observations of generally normal physical functioning. See  
20 Amos V. Commissioner of Social Security, 18-CV-1367, that's  
21 a 2020 West Law at 1493888 at pages 4 through 5, a Western  
22 District New York March 27th of 2020 case; and therein  
23 holding that the opinion of a consultative examiner who did  
24 not review the plaintiff's MRI could constitute substantial  
25 evidence to support the ALJ's physical RFC determination,

1 where physicians who did have access to the MRI consistently  
2 reported normal findings on examination and did not provide  
3 any functional limitations in their reports.

4 Further, this Court notes that the remand order  
5 stated that additional evidence may include, if warranted  
6 and available, an appropriate physical consultative  
7 examination and medical source statement about what the  
8 claimant can still do despite the impairments. As a result,  
9 the ALJ had discretion to further develop the record with an  
10 updated consultative examination, and the ALJ did not err by  
11 electing not to do so.

12 Now turning to the next issue, if the plaintiff  
13 has an impairment that could reasonably be expected to cause  
14 her alleged symptoms, then the ALJ must consider but not  
15 necessarily accept the alleged symptoms. See 20 CFR  
16 sections 404.1529(c)(1) and 416.929(c)(1).

17 Here in this case, when analyzing the subjective  
18 claims of a plaintiff, the ALJ followed SSR 16-3p, which  
19 details a two-step analysis. At step one, the ALJ  
20 determined that plaintiff has medically determinable  
21 impairments that can reasonably be expected to cause the  
22 symptoms that she described.

23 At step two, the ALJ evaluated the intensity and  
24 persistence of plaintiff's symptoms and determined that the  
25 evidence does not fully support her allegations regarding

1 the extent of the functional limitations caused by other  
2 symptoms. For example, the ALJ noted that plaintiff could  
3 bathe herself and clean her home and do laundry in 2015;  
4 that she walked for exercise; and, with some assistance from  
5 her children, cooked and did laundry. In addition, the ALJ  
6 stated that during plaintiff's most recent pain management  
7 appointment in January 2020 her back pain was only mild to  
8 moderate in severity and that she presented as comfortable,  
9 with a normal gait, normal posture, no muscle spasms, no  
10 muscle atrophy of the lower extremity, and normal strength  
11 and sensation. See administrative transcript at page 501.

12 The ALJ properly evaluated plaintiff's subjective  
13 complaints.

14 In conclusion, it's the decision of this order,  
15 this Court, I should say, that I find that correct legal  
16 principles were applied and substantial evidence supports  
17 the ALJ's determination. As a result, plaintiff's motion  
18 for judgment on the pleadings is denied; defendant's motion  
19 for judgment on the pleadings is granted; plaintiff's  
20 complaint is dismissed; and the Commissioner's decision  
21 denying plaintiff benefits is hereby affirmed.

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